

No. 12036

United States
Court of Appeals
for the Ninth Circuit

VICTOR J. VEATCH,

Appellant,

vs.

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

Appellee,

Transcript of Record

Upon Appeal from the Supreme Court for the
Territory of Hawaii

OCT 5 - 1948

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Agreed Statement of Points.....	12
Exhibit A—Major Tax Revenues Received by Territory of Hawaii, from July 1, 1943, to June 30, 1947	14
Appeal:	
Citation on	58
Cost Bond on	55
Decision on	47
Notice and Certificate of.....	16
Order Allowing and Fixing Amount of Bond on	54
Petition for	48
Statement of Points on Appeal (USCA).....	62
Assignment of Errors.....	49
Complaint and Summons.....	2
Certificate of Clerk (DC).....	24
Certificate of Clerk (SC).....	61
Citation on Appeal.....	58

	PAGE
Cost Bond on Appeal.....	55
Decision on Appeal.....	47
Demurrer	7
Designation of Parts of Record to be Printed....	62
Judgment	15
Magistrate's Certificate	25
Magistrate's Certificate of Appeal.....	17
Names and Addresses of Attorneys.....	1
Notice and Certificate of Appeal.....	16
Order Allowing Appeal and Fixing Amount of Bond	54
Opinion of the Court.....	25
Petition for Appeal.....	48
Praecipe (DC)	23
Praecipe (SC)	59
Statement of Points on Appeal (USCA).....	62

NAMES AND ADDRESSES OF ATTORNEYS

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Honolulu, T. H.

Attorney for Appellant.

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RHODA V. LEWIS,
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Iolani Palace, Honolulu, T. H.,

Attorneys for Appellee. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

District Court of Ewa, County of Honolulu,
Territory of Hawaii

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

Plaintiff,

vs.

VICTOR J. VEATCH,

Defendant.

BANK OF HAWAII, Pearl Harbor Branch, and
the BISHOP FIRST NATIONAL BANK OF
HAWAII, Hickam Branch,

Garnishees.

COMPLAINT AND SUMMONS

COMPLAINT

Comes now William Borthwick, Tax Commissioner of the Territory of Hawaii, plaintiff above-named, and complaining of the above-named defendant, alleges as follows:

I.

That he is the duly appointed, qualified and acting Tax Commissioner of the Territory of Hawaii.

II.

That said defendant is in the Ewa District, County of Honolulu, Territory of Hawaii, and within the jurisdiction of the above entitled court; that the Bank of Hawaii (Pearl Harbor Branch), one of the garnishees above-named, is a corporation organized and doing business under the laws of the Territory of Hawaii, and has a branch at Pearl Harbor, District of Ewa, County of [4] Honolulu

aforesaid; that the Bishop First National Bank of Hawaii (Hickam Branch), is a corporation organized and doing business under the laws of the Territory of Hawaii and has a branch at Hickam Field, Ewa District, County of Honolulu aforesaid.

III.

The defendant is indebted to the Territory of Hawaii for compensation and dividend taxes, pursuant to Chapter 98 of the Revised Laws of Hawaii 1945, as amended, on the tax books, tax lists and assessment records in the custody of the Tax Commissioner, together with penalties and interests thereon as follows:

Year	Tax	Penalty	Interest to 10/31/46	Total
1944	\$12.02	\$1.20	\$1.85	\$15.07
1945	\$74.69	\$7.47	\$6.57	\$88.73
1946	\$48.29	\$3.00	\$.65	\$51.94

together with interests, commencing 1 November 1946 at the rate of $\frac{2}{3}$ of 1% per month or fraction thereof on the amount of the taxes and penalties.

IV.

That the said defendant, though thereunto requested, has thus far failed and neglected and does still neglect and refuse to pay such taxes, penalties and interests, or any part thereof. [5]

V.

That plaintiff is informed and believes and upon such information and belief alleges that goods or effects of the defendant are concealed in the hands of the above-named garnishee as attorney, agent, factor, banker or trustee, so that they cannot be found to be attached or levied upon, or that debts are due from the said garnishees to the said de-

fendant, or that the said garnishees are the persons from whom the defendant is in receipt of a salary, stipend, commissions, or wages.

Wherefore, plaintiff prays that a garnishee summons issue out of this court, and for judgment against said defendant in the sum of \$155.74 together with interest to accrue as aforesaid and the costs herein incurred, and for such other relief as may seem just and proper.

Dated at Honolulu, T. H., this 29th day of November, 1946.

/s/ WM. BORTHWICK,
Tax Commissioner of the
Territory of Hawaii.

(Duly Verified.) [6]

GARNISHEE SUMMONS

The Territory of Hawaii:

To the High Sheriff of the Territory of Hawaii, or his Deputy; the sheriff of the County of Honolulu, his Deputy, or any Police Officer of the District of Honolulu, County of Honolulu, Territory of Hawaii:

You Are Commanded to summon Victor J. Veatch, Defendant, if he can be found in this District, to appear before the District Magistrate of Ewa, at his Court Room in Pearl City, Ewa, 10:30 a.m., on the first Friday, following the date of service, and should such Friday be a legal holiday, then upon the next secular day, to show cause why the claim of William Borthwick, Tax Commissioner

of the Territory of Hawaii, Plaintiff, should not be awarded to him pursuant to the tenor of his annexed complaint or declaration.

Notify said defendant that if he fail to attend at the above named time and place judgment will be entered against him *ex parte*, by default.

And You Are Also Commanded to leave a true and attested copy of this Writ with the Bank of Hawaii, Pearl Harbor Branch, and the Bishop First National Bank of Hawaii, Hickam Branch, the attorneys, agents, factors, trustees, or debtors, of the above named Defendant, and being the person from whom the defendant is in receipt of any salary, stipend, wages, annuity or pension, or at the place of their usual abode, and summon them to appear personally in said Court at the time and place above named, or to file a written return as provided by law, and, on oath, disclose whether they or at the time said copy was served, had any of the goods or effects of the Defendant in their hands, and, if so, the nature, amount and value of the same, or whether they are indebted to the Defendant, and, if so, the amount and nature of such debt or whether the Defendant, at said time of service, was in receipt from said garnishee of any salary, stipend, wages, annuity or pension, and, if so, the amount or rate thereof.

Notify the Said Garnishee that upon default to attend at the time and place above mentioned, or to file such written return, execution will be issued against their proper estate for the amount of such judgment as the Plaintiff may recover against the Defendant.

And You Are Further Commanded To Make Due

Return On This Summons With Your Doings,
Thereon.

Given Under My Hand this 19th day of December, 1946.

R. M. YATES,
Judge, District Court of Ewa, County of Honolulu,
Territory of Hawaii. [8]

Served the within Summons on Victor J. Veatch therein named as defendant by handing him a true and attested copy thereof and at the same time showing him the original, at Hickam Field, T. H., this 7th day of January, 1947.

146 Gardner Ave. 4:30 p.m.

JOHN YOUNG,
Deputy High Sheriff.

Served the within Summons on Mr. S. A. Parish, branch mgr., who accepted service for Bishop First National Bank of Hawaii, Hickam Branch, therein named as garnishee by leaving with him a true and attested copy thereof at Hickam Field, T. H., this 7th day of January, 1947.

/s/ JOHN YOUNG,
Deputy High Sheriff.

Served the within Summons on Mr. B. Wong, accountant, who accepted service for Bank of Hawaii, Pearl Harbor Branch, therein named as garnishee by leaving with him a true and attested copy thereof at Pearl Harbor, T. H., this 7th day of January, 1947.

/s/ JOHN YOUNG,
Deputy High Sheriff.

[Endorsed]: Filed and issued 12/19/46. Thomas L. Miki, Clerk, Honolulu District Court of Ewa.

[Title of District Court and Cause.]

DEMURRER

Comes now the Defendant above named, by Hyman M. Greenstein, his attorney, and demurs to the complaint on file herein on the following grounds:

I.

The Defendant, being employed at Hickam Field, does not receive compensation for "personal services performed within the Territory" within the meaning of Sec. 5342 R.L.H. 1945, and hence is not subject to the Compensation and Dividends Tax Law.

II.

The Territory of Hawaii does not have jurisdiction over the person of federal employees living and working on military reservations to permit it to impose a tax on compensation derived from such employment.

III.

The Defendant is a federal employee, living on land reserved for purposes of the United States Army and working [10] on a military reservation, and hence is not subject to the jurisdiction of the Territory of Hawaii in connection with matters arising out of such employment.

IV.

The Compensation and Dividends Tax Law as applied to persons working in military establishments is unconstitutional and in violation of Clause 17 of Art. I, Sec. 8, of the Constitution of the United States which grants exclusive power of leg-

islation over such areas to the Congress of the United States.

V.

A federal employee is not subject to taxation by the Territory of Hawaii on compensation received for personal services performed by him for the United States Government in the absence of specific authority or consent granted either in the Organic Act or by other Act of Congress. Nothing in the Organic Act for the Territory of Hawaii, nor any other act of the Congress of the United States specifically grants unto the Territory such power of taxation.

VI.

The taxation by the Territory of Hawaii of the compensation of federal employees living on military reservations is not a "rightful subject of legislation" within the meaning of Section 55 of the Organic Act for the Territory of Hawaii.

VII.

The imposition of a tax on the compensation of federal employees working and living within areas reserved for military or naval purposes works an undue burden on the Government of the United States.

VIII.

The provision in the Compensation and Dividends Tax Law exempting members of the Armed Forces on active duty renders said act unconstitutional on the following grounds: [11]

(a) It grants special privileges and immunities to individuals without the same having been approved by Congress, as is required by Sec. 55 of the Organic Act.

(b) It is discriminatory in that it exempts members of the Armed Forces on active duty but does not exempt federal employees living and working on military or naval reservations or areas reserved for purposes of the army or navy of the United States.

IX.

That said tax law is discriminatory in that it subjects Defendant, as a federal employee, to the penalty of fine and imprisonment, to which employees of private persons are not subjected.

X.

That said tax law is discriminatory in that it subjects Defendant, as a federal employee, to the burden of filing returns while employees of private persons are not so burdened; and in that Defendant's employer (the United States) is not required to make deductions on account of said tax, while employers of private persons are so required.

XI.

That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th Amendment to the Constitution of the United States in that he is taxed upon compensation, a portion of which he never actually receives; his gross compensation being first subject to deduction for federal income withholding taxes.

XII.

That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the

Constitution of the United States [12] in that said tax is imposed without regard to whether or not the tax payer is already so subject to taxation by the state of his domicile.

XIII.

That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in that the rate of said tax is discriminatory—salaried persons being subject to a 2% tax, while persons engaged in businesses, professions, or as wholesalers, manufacturers, producers, etc. are subject to a tax at a lesser rate.

XIV.

That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in the following respect:

Said tax law is imposed in co-ordination with the income tax law and credit up to 75% paid under said tax law is credited as against the amount due under said Income Tax Law, certain personal exemptions being allowed under said Income Tax Law—but no provision is made for the return to taxpayer of any monies he may have paid in excess of that due under the Income Tax Law after giving credit for the personal exemptions that are allowed—thus in effect imposing a higher tax rate on the low income bracket taxpayer.

XV.

That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in that said tax is oppressive and carries an unfair share of the entire tax load of the Territory of Hawaii. [13]

XVI.

That said tax law is unconstitutional as applied to the Defendant in that it is an example of "taxation without representation".

Wherefore, Defendant prays that this demurrer be sustained, and that the complaint against him be dismissed.

Dated at Honolulu, T. H., this 31st day of October, 1947.

VICTOR J. VEATCH,

Defendant,

By /s/ HYMAN M. GREENSTEIN,

His Attorney.

CERTIFICATION OF COUNSEL

I, Hyman M. Greenstein, an attorney at law, duly admitted and licensed to practice law in all the courts of the Territory of Hawaii, and attorney for the Defendant herein do certify that the foregoing demurrer is not interposed for the purpose of delay, and in my opinion is well taken in point of law.

/s/ HYMAN M. GREENSTEIN. [14]

[Title of District Court and Cause.]

AGREED STATEMENT OF FACTS

It is hereby stipulated and agreed by and between the parties through their respective counsel, that the within case shall be tried on the following facts:

1. That defendant Victor J. Veatch, is a civilian employee of the United States Army, Hawaiian Air Material Area, working and living at Hickam Field, Oahu, Territory of Hawaii.

2. That for his services as such employee of the United States Army, defendant received during the periods below stated, the following compensation:

October to December, 1944.....	\$ 601.00
The year 1945.....	3,734.50
January to September, 1946.....	2,414.40

That defendant admits that the amount of taxes, penalties and interest sought to be recovered, as set forth [16] in Paragraph III of the Complaint are correct, if any taxes are due, but that defendant denies he is subject to said Compensation and Dividends Tax Law.

3. That the services for which such compensation was received, were performed within Hickam Field, Oahu, Territory of Hawaii.

4. That said area of Hickam Field, wherein said defendant is employed and lives is a military reservation of the United States.

5. That defendant is domiciled in and a citizen of the State of Colorado, and owns his own home at 444 Cooper Avenue, Colorado Springs, Colorado, and pays real estate and personal property taxes in connection therewith.

6. That defendant has returned the compensation above set forth for taxation under the net income tax law of the State of Colorado and has paid a net income tax thereon without claiming or receiving any credit on account of his tax liabilities, if any, to the Territory of Hawaii.

7. The major revenues received from taxation by the Territory of Hawaii for the period of time from 1943 to date are as set forth in Exhibit "A", attached hereto and made a part hereof.

8. That this stipulation is entered into without prejudice to the right of either party to contend that the facts herein stipulated to, or some of them, are irrelevant and immaterial.

Dated at Honolulu, T. H., this 31st day of October, 1947.

/s/ RHODA V. LEWIS,
Assistant Attorney General,
Attorney for Plaintiff.

/s/ HYMAN M. GREENSTEIN,
Attorney for Defendant. [17]

EXHIBIT "A"

Major Tax Revenues Received by the Territory of
Hawaii from July 1, 1943, to June 30, 1947

	Biennium 1943-1945	Biennium 1945-1947
Real Property.....	\$12,803,871.32	\$14,254,133.82
Personal Property.....	7,827,053.15	7,934,809.45
Income, personal and corporation	7,851,107.57	6,426,818.09
Public utility.....	3,435,077.47	3,704,098.77
Liquid fuel.....	3,269,506.75	5,434,611.56
Compensation and dividend.....	14,523,446.81	17,552,490.93
Bank excise.....	100,000.00	137,500.00
Liquor.....	3,210,298.23	3,414,336.88
Tobacco.....	830,887.22	936,628.14
Gross income and consumption.....	20,829,531.78	23,982,503.83
Unemployment compensation.....	3,619,833.29	3,543,085.66
<hr/>		
Administered by Tax Commissioner.....	\$78,300,613.59	\$87,321,017.13
<hr/>		
Inheritance and estate.....	\$ 595,283.37	\$ 1,430,872.94
Insurance.....	843,034.22	978,189.94
<hr/>		
Administered by Territorial Treasurer.....	\$ 1,438,317.59	\$ 2,409,062.88
<hr/>		
Total.....	\$79,738,931.18	\$89,730,080.01
<hr/>		

District Court of Ewa, County of Honolulu,
Territory of Hawaii

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

Plaintiff,

vs.

VICTOR J. VEATCH,

Defendant,

BANK OF HAWAII, Pearl Harbor Branch, and
the BISHOP FIRST NATIONAL BANK OF
HAWAII, Hickam Branch,

Garnishees.

JUDGMENT

I hereby certify that on the day of October, A. D. 1947, in the above entitled cause, the District Magistrate of Ewa, County of Honolulu, Territory of Hawaii, gave judgment for the plaintiff above named and against the defendant above named for the following item in the following amount:

Compensation and Dividend Taxes \$237.35

Together with interest to accrue thereon from and after November 1, 1947, at the respective rates as provided by law.

The garnishees herein are hereby ordered to withhold from the salary, stipend, wages, annuity, pension or commissions then due and belonging to the defendant herein at the time of service of process, 10% of the first \$100.00 thereof, and 20% of the amount thereof in excess of \$100.00, and at the same rates of percentage and proportion of any further salary, stipend, wages, annuity, pension or

commission that might have thereafter become due to said defendant, and pay such amount or amounts so withheld to the plaintiff herein, or his, her or its attorney, until the judgment herein and the legal interest thereon are fully paid, or until further order of the above entitled court.

Dated: Pearl City, Honolulu, T. H., Oct. 31st, 1947.

/s/ ROBERT M. YATES,

District Court of Ewa, County of Honolulu, Territory of Hawaii. [20]

[Title of District Court and Cause.]

NOTICE AND CERTIFICATE OF APPEAL

I Hereby Certify that on the 31st day of October, 1947 in the above entitled cause, I, the District Magistrate of Ewa, County of Honolulu, Territory of Hawaii, gave judgment for the plaintiff above named and against the defendant above named for the following item in the following amount:

Compensation and Dividend Taxes....\$237.35

Together with interest to accrue thereon from and after November 1, 1947, at the respective rates as provided by law.

That an appeal from said judgment was duly

noted by the Defendant above-named to the Supreme Court of the Territory of Hawaii, on points of law, and that said appeal has since been duly perfected.

A full and correct copy of my record in said case is hereto attached.

Given under my hand this 31st day of October,
A. D. 1947.

/s/ ROBERT M. YATES,
District Magistrate of Ewa, City and County of
Honolulu, Territory of Hawaii.

Memorandum of Cost

Appeal costs, \$25.00; total sent up herewith,
\$25.00. [21]

[Title of District Court and Cause.]

MAGISTRATE'S CERTIFICATE OF APPEAL

I hereby certify that on the 31st day of October, 1947, in the above entitled cause, judgment was entered against the Defendant in the amount of \$237.35.

This is a civil suit brought by the Tax Commissioner of the Territory of Hawaii, against Victor J. Veatch, Defendant, and certain Garnishees, for taxes due and owing the Territory of Hawaii pursuant to the Compensation and Dividends Tax Law.

Defendant is a civilian employee of the U. S.

Army, living and working at Hickam Field, Oahu, Territory of Hawaii.

A Demurrer was filed in behalf of the Defendant challenging the constitutionality of the Compensation and Dividends Tax Law as applied to persons working and living in military reservations.

Said Demurrer was overruled; and the case tried on an Agreed Statement of Facts, which statement admitted the amounts complained of in the Complaint but challenged the applicability of said law to persons working and living on a military reservation. [23]

The case being submitted on the Agreed Statement of Facts, judgment was entered as hereinabove set forth.

I further certify that the points of law involved herein are as set forth in the Demurrer, in that the constitutionality of the Compensation and Dividends Tax Law is challenged by the Defendant herein on the following grounds:

1. The Defendant, being employed at Hickam Field, does not receive compensation for "personal services performed within the Territory" within the meaning of Section 5342 R.L.H. 1945, and hence is not subject to the Compensation and Dividends Tax Law.

2. The Territory of Hawaii does not have jurisdiction over the person of federal employees living and working on military reservations to permit it to impose a tax on compensation derived from such employment.

3. The Defendant is a federal employee, living on land reserved for purposes of the United States Army and working on a military reservation, and hence is not subject to the jurisdiction of the Territory of Hawaii in connection with matters arising out of such employment.

4. The Compensation and Dividends Tax Law as applied to persons working in military establishments is unconstitutional and in violation of Clause 17 of Art. I, Sec. 8, of the Constitution of the United States which grants exclusive power of legislation over such areas to the Congress of the United States.

5. A Federal employee is not subject to taxation by the Territory of Hawaii on compensation received for personal services performed by him for the United States Government in the absence of specific authority or consent granted either in the Organic Act or by other Act of Congress. Nothing in the [24] Organic Act for the Territory of Hawaii, nor any other act of the Congress of the United States specifically grants unto the Territory such power of taxation.

6. The taxation by the Territory of Hawaii of the compensation of federal employees living on military reservations is not a "rightful subject of legislation" within the meaning of Section 55 of the Organic Act for the Territory of Hawaii.

7. The imposition of a tax on the compensation of Federal employees working and living within areas reserved for military or naval purposes

works an undue burden on the Government of the United States.

8. The provision in the Compensation and Dividends Tax Law exempting members of the Armed Forces on active duty renders said act unconstitutional on the following grounds:

(a) It grants special privileges and immunities to individuals without the same having been approved by Congress, as is required by Sec. 55 of the Organic Act.

(b) It is discriminatory in that it exempts members of the Armed Forces on active duty but does not exempt Federal employees living and working on military or naval reservations or areas reserved for purposes of the Army or Navy of the United States.

9. That said tax law is discriminatory in that it subjects Defendant as a Federal employee to the penalty of fine and imprisonment, to which employees of private persons are not subjected.

10. That said tax law is discriminatory in that it subjects Defendant as a Federal employee to the burden of filing returns while employees of private persons are not so [25] burdened; and in that Defendant's employer (the United States) is not required to make deductions on account of said tax, while employers of private persons are so required.

11. That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th Amendment to the Constitution of the United States in that he is taxed upon

compensation, a portion of which he never actually receives; his gross compensation being first subject to deduction for Federal income withholding taxes.

12. That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in that said tax is imposed without regard to whether or not the taxpayer is already so subject to taxation by the state of his domicile.

13. That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in that the rate of said tax is discriminatory—salaried persons being subject to a 2 per cent tax, while persons engaged in businesses, professions, or as wholesalers, manufacturers, producers, etc., are subject to a tax at a lesser rate.

14. That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in the following respect:

Said tax law is imposed in co-ordination with the income tax law and credit up to 75 per cent paid under said tax law is credited as against the amount due under said Income Tax Law, certain personal exemptions being allowed under said Income Tax Law—but no provision is made for [26] the return to tax-

payer of any monies he may have paid in excess of that due under the Income Tax Law after giving credit for the personal exemptions that are allowed—thus in effect imposing a higher tax rate on the low income bracket taxpayer.

15. That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th amendments to the Constitution of the United States in that said tax is oppressive and carries an unfair share of the entire tax load of the Territory of Hawaii.

16. That said tax law is unconstitutional as applied to the Defendant in that it is an example of “taxation without representation”.

That I ruled against the Defendant on all of said points of law, in overruling the Demurrer filed herein.

An appeal from said judgment has been duly noted by the Defendant to the Supreme Court of the Territory of Hawaii on points of law, and said appeal has been duly perfected.

A full and correct copy of my record in this case is hereto attached.

Given under my hand this 31st day of October, 1947.

/s/ ROBERT M. YATES,

District Magistrate of Ewa, City and County of Honolulu, Territory of Hawaii. [27]

[Title of District Court and Cause.]

Appeal from the District Court of Ewa, County of Honolulu, Territory of Hawaii, on Points of Law.

PRAECIPE

To the Clerk of the above entitled court:

You are hereby directed to prepare and forward to the Supreme Court of the Territory of Hawaii, the following records for appeal in said case.

1. Complaint and Summons.
2. Answer and Disclosure of Garnishees.
3. Demurrer.
4. Agreed Statement of Facts.
5. Judgment.
- 6 Notice of Appeal.
7. Magistrate's Certificate of Appeal.
8. This Praecipe.
9. Clerk's Certificate.
10. Itemized Statement of Costs.

Dated at Honolulu, T. H., this 7th day of November, 1947.

VICTOR J. VEATCH,
Defendant,

By /s/ HYMAN M. GREENSTEIN,
His Attorney. [29]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, Thomas Miki, Clerk of the District Court of Ewa, County of Honolulu, Territory of Hawaii, do hereby certify that the foregoing papers and pleadings are the originals in the above entitled cause.

The documents are specifically designated and enumerated as follows:

1. Complaint and Summons
2. Garnishee Summons
3. Answer and Disclosure of Bank of Hawaii
4. Disclosure of Bishop National Bank
5. Demurrer
6. Agreed Statement of Facts and Exhibit "A"
7. Judgment
8. Notice and Certificate of Appeal
9. Magistrate's Certificate of Appeal [30]
10. Praecipe
11. Clerk's Certificate
12. Magistrate's Certificate

Dated at Pearl City, Territory of Hawaii, this 14th day of November, A. D. 1947.

/s/ THOMAS L. MIKI,

Clerk, District Court of Ewa.

[Title of District Court and Cause.]

MAGISTRATE'S CERTIFICATE

I, R. M. Yates, the Presiding Magistrate in the above entitled cause, hereby make a return to the Appeal heretofore perfected by the Defendant on Points of Law and hereby remit to the Supreme Court of the Territory of Hawaii the Record on Appeal.

Dated at Pearl City, T. H., this 14th day of November, A. D. 1947.

/s/ R. M. YATES,

District Magistrate of Ewa.

————— [32]

In the Supreme Court of the Territory of Hawaii,
October Term 1947.

No. 2690

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

v.

VICTOR J. VEATCH.

Appeal from District Magistrate of Ewa,
Hon. R. M. Yates, Magistrate.

Submitted July 8, 1948.

Decided July 30, 1948.

Kemp, C. J., Peters and Le Baron, JJ.

Taxation—Legislative Power of Territory.

The term "all rightful subjects of legislation," as employed in section 55 of the Organic Act, is all-

inclusive and no implication arises from the absence of a specific grant of the legislative power to tax.

Same — compensation and dividends tax — effect of residence and employment on military reservation where compensation is earned.

Compensation paid an employee of the United States Army who resides on a military reservation within the geographical limits of the Territory of Hawaii for personal service performed by him on said military reservation is compensation paid for or attributable to personal services “performed within the Territory” within [34] the meaning of the word “compensation” as used in the compensation and dividends tax law. (R.L.H. 1945, c. 98.)

Same—same—compensation assessable.

Payment by an employer of federal income taxes assessable against the compensation of an employee made in consideration of his services constitutes additional taxable compensation of the employee under the compensation and dividends tax law of Hawaii.

Same—constitutional requirements and restrictions—double taxation.

The objection that upon compensation received by the taxpayer for services performed by him within the Territory of Hawaii he is subjected to double taxation, namely, to an income tax under the laws of the State of Colorado, the State of his domicile, and to the compensation and dividends tax under the provisions of Revised Laws of Hawaii 1945, chapter 98, cannot be considered in

the absence of evidence of the terms and provisions of the income tax law of the State of Colorado, pursuant to which the income tax was paid by the taxpayer.

Same—same—discrimination.

No discrimination in a constitutional sense results from the difference between the tax rates in the general excise tax law (R.L.H. 1945, c. 101) and the compensation and dividends tax law nor from the failure of the income tax law (R.L.H. 1945, § 5504) to grant a refund of taxes paid under the compensation and dividends tax law in excess of the exemption of seventy-five per cent nor [35] from the proportion that the compensation and dividends taxes collected bear to the total taxes collected under the tax laws of the Territory. [36]

OPINION OF THE COURT

By KEMP, C. J.

This is an appeal on points of law from a decision and judgment entered against Victor J. Veatch (hereinafter referred to as defendant), in favor of William Borthwick, tax commissioner of the Territory of Hawaii (hereinafter referred to as plaintiff), by the district magistrate of the district of Ewa, City and County of Honolulu, Territory of Hawaii.

The plaintiff instituted the suit in the district court of Ewa alleging that the defendant is in the Ewa district and within the jurisdiction of the above-entitled court and that he is “indebted to the Territory of Hawaii for compensation and divi-

dend taxes, pursuant to Chapter 98 of the Revised Laws of Hawaii 1945, as amended, * * * together with penalties and interest thereon * * *” for the years 1944, 1945 and 1946.

The statute, chapter 98, Revised Laws of Hawaii 1945, which imposes the tax here involved, is entitled “Compensation and Dividends Tax Law” and comprises sections 5341 to 5359 of said Revised Laws, both sections included. Such of its provisions as are pertinent to the issues here involved may be summarized as follows: It imposes a tax of two per cent upon all compensation received by every person with the exception of (1) compensation paid out of funds appropriated for the relief of unemployment, (2) paid out of public welfare funds, (3) paid to employees in the county of Kalawao, (4) paid as a pension for past service, and (5) compensation received from the United States by members of the United States Army, Navy, Marine Corps and Coast Guard on active service. (§ 5344.) Said statute defines [37] “compensation” as including salaries “paid for or attributable to personal services performed within the Territory received by an individual * * *.” (§ 5342.)

The defendant demurred to the complaint alleging sixteen grounds, as follows:

“I.

“The Defendant, being employed at Hickam Field, does not receive compensation for ‘personal services performed within the Territory’ within the meaning of Sec. 5342 R.L.H. 1945, and hence is not subject to the Compensation and Dividends Tax Law.

“II.

“The Territory of Hawaii does not have jurisdiction over the person of federal employees living and working on military reservations to permit it to impose a tax on compensation derived from such employment.

“III.

“The Defendant is a federal employee, living on land reserved for purposes of the United States Army and working on a military reservation, and hence is not subject to the jurisdiction of the Territory of Hawaii in connection with matters arising out of such employment.

“IV.

“The Compensation and Dividends Tax Law as applied to persons working in military establishments is unconstitutional and in violation of Clause 17 of Art. I, Sec. 8, of the Constitution of the United States which grants exclusive power of legislation over such area to the Congress of the United States. [38]

“V.

“A federal employee is not subject to taxation by the Territory of Hawaii on compensation received for personal services performed by him for the United States Government in the absence of specific authority or consent granted either in the Organic Act or by other Act of Congress. Nothing in the Organic Act for the Territory of Hawaii, nor any other act of the Congress of the United States specifically grants unto the Territory such power of taxation.

“VI.

“The taxation by the Territory of Hawaii of the compensation of federal employees living on military reservations is not a ‘rightful subject of legislation’ within the meaning of Section 55 of the Organic Act for the Territory of Hawaii.

“VII.

“The imposition of a tax on the compensation of federal employees working and living within areas reserved for military or naval purposes works an undue burden on the Government of the United States.

“VIII.

“The provision in the Compensation and Dividends Tax Law exempting members of the Armed Forces on active duty renders said act unconstitutional on the following grounds:

“A. It grants special privileges and immunities to individuals without the same having been approved by Congress, as is required by Sec. 55 of the Organic Act.

“B. It is discriminatory in that it exempts members of the Armed Forces on active duty but does not exempt federal employees living and working on military or naval reservations or areas reserved for purposes of the Army or Navy of the United [39] States.

“IX.

“That said tax law is discriminatory in that it subjects Defendant, as a federal employee, to the penalty of fine and imprisonment, to which employees of private persons are not subjected.

“X.

“That said tax law is discriminatory in that it subjects Defendant, as a federal employee, to the burden of filing returns while employees of private persons are not so burdened; and in that Defendant’s employer (the United States) is not required to make deductions on account of said tax, while employers of private persons are so required.

“XI.

“That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th Amendment to the Constitution of the United States in that he is taxed upon compensation, a portion of which he never actually receives; his gross compensation being first subject to deduction for federal income withholding taxes.

“XII.

“That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in that said tax is imposed without regard to whether or not the taxpayer is already so subject to taxation by the state of his domicile.

“XIII.

“That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and [40] 14th Amendments to the Constitution of the United States in that the rate of said tax is discriminatory—salaried persons being subject to a 2% tax, while persons engaged in businesses, professions, or as wholesalers, manu-

facturers, producers, etc. are subject to a tax at a lesser rate.

“XIV.

“That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in the following respect:

“Said tax law is imposed in co-ordination with the income tax law and credit up to 75% paid under said tax law is credited as against the amount due under said Income Tax Law, certain personal exemptions being allowed under said Income Tax Law—but no provision is made for the return to taxpayer of any monies he may have paid in excess of that due under the Income Tax Law after giving credit for the personal exemptions that are allowed—thus in effect imposing a higher tax rate on the low income bracket taxpayer.

“XV.

“That under said tax law the Defendant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in that said tax is oppressive and carries an unfair share of the entire tax load of the Territory of Hawaii.

“XVI.

“That said tax law is unconstitutional as applied to the Defendant in that it is an example of ‘taxation without representation’.” [41]

The demurrer was overruled and the case was

thereupon submitted upon an agreed statement of facts as follows:

“1. That defendant Victor J. Veatch, is a civilian employee of the United States Army, Hawaiian Air Material Area, working and living at Hickam Field, Oahu, Territory of Hawaii.

“2. That for his services as such employee of the United States Army, defendant received during the periods below stated, the following compensation:

“October to December, 1944.....\$ 601.00

“The year 1945 3,734.50

“January to September, 1946..... 2,414.50

“That defendant admits that the amount of taxes, penalties and interest sought to be recovered, as set forth in Paragraph III of the Complaint are correct, if any taxes are due, but that defendant denies he is subject to said Compensation and Dividends Tax Law.

“3. That the services for which such compensation was received, were performed within Hickam Field, Oahu, Territory of Hawaii.

“4. That said area at Hickam Field, wherein said defendant is employed and lives is a military reservation of the United States.

“5. That defendant is domiciled in and a citizen of the State of Colorado, and owns his own home at 44 Cooper Avenue, Colorado Springs, Colorado, and pays real estate and personal property taxes in connection therewith.

“6. That defendant has returned the compensa-

tion above set forth for taxation under the net income tax law of the State of Colorado and has paid a net income tax thereon without claiming or receiving any credit on account of his tax liabilities, [42] if any, to the Territory of Hawaii.

“7. The major revenues received from taxation by the Territory of Hawaii for the period of time from 1943 to date are as set forth in Exhibit ‘A’ attached hereto and made a part hereof.

“8. That this stipulation is entered into without prejudice to the right of either party to contend that the facts herein stipulated to, or some of them, are irrelevant and immaterial.”

Exhibit “A”, attached to and made a part of the agreed statement of facts, shows that for the 1945-1947 biennium the compensation and dividends tax produced approximately 17.55 million dollars out of a total from all sources of approximately 89.73 million dollars and for the 1943-1945 biennium approximately 14.52 million dollars out of a total from all sources of approximately 79.74 million dollars.

Thereafter judgment was entered against the defendant in accordance with the prayer of the plaintiff.

The defendant duly perfected an appeal to this court on points of law and the magistrate certified the appeal to this court as follows:

“Defendant is a civilian employee of the U. S. Army, living and working at Hickam Field, Oahu, Territory of Hawaii.

“A Demurrer was filed in behalf of the Defen-

dant challenging the constitutionality of the Compensation and Dividends Tax Law as applied to persons working and living in military reservations.

“Said Demurrer was overruled; and the case tried on an [43] Agreed Statement of Facts; which statement admitted the amounts complained of in the Complaint but challenged the applicability of said law to persons working and living on a military reservation.

“The case being submitted on the Agreed Statement of Facts, judgment was entered as hereinabove set forth.

“I further certify that the points of law involved herein are set forth in the Demurrer, in that the constitutionality of the Compensation and Dividends Tax Law is challenged by the Defendant herein on the following grounds: (Here follow the sixteen grounds of the demurrer.)

“That I ruled against the Defendant on all of said points of law, in overruling the Demurrer filed herein.”

We shall first consider defendant's point V because by it he places his reliance upon the fact that nothing in the Organic Act nor any other Act of Congress specifically grants unto the Territory the power or authority to tax the compensation received by a federal employee for personal services performed by him for the United States.

Defendant misconceives the import of section 55 of the Organic Act, which declares that “the legislative power of the Territory shall extend to all

rightful subjects of legislation * * *.” The Congress thereby sought to vest the territorial legislature with “all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress.” *Clinton v. Englebrecht*, 80 U. S. 434, 441. See also *Maynard v. Hill*, 125 U. S. 190, 204, 205; *Cope v. Cope*, 137 U. S. 682, 684, and *Territory v. O’Connor*, 41 N. W. 746, 749, where it is said: [44] “It is too late now for the courts to hold that the territory is other than a temporary sovereign government—temporary, in that its organic laws and its very existence are subject to the paramount will of Congress, its creator; sovereign, in that its executive, legislative, and judicial powers are unlimited except by the terms of the constitution or its organic law. When Congress created the temporary sovereign government of the territory, it intended to confer upon it such legislative powers as are usually exercised by sovereign states.” The Territory of Hawaii is just such a sovereign. (*Kawananakoa v. Polyblank*, 205 U. S. 349, 353.) Unless expressly restricted, the powers conferred include the power to tax. (*W. C. Peacock & Co. v. Pratt*, 121 Fed. 772, 775, a case involving our own Organic Act, where it is said: “The only restriction of the powers of the territorial Legislature contained in the Organic Act is the provision that the ‘legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States

locally applicable.' ” See also *In Re Yerian*, 35 Haw. 855, *aff'd*, 130 F. (2d) 786; *Kitagawa v. Shipman*, 31 Haw. 726, *aff'd*, 54 F. (2d) 313; *cert. denied*, 286 U. S. 543; *Com'rs of Silver Bow County v. Davis*, 6 Mont. 306; *Talbott v. Silver Bow County*, 139 U. S. 438, and 1 Cooley, *Taxation* (4th ed.) § 118, where it is said that “The plenary legislative power which Congress possesses over territories may be exercised either by it or may be delegated to the legislature of the territory. Generally it is delegated to the territorial legislature.”)

In view of the foregoing, the absence of express grant to the legislature of power to levy a particular character of tax carries no implication against the existence of the power. [45]

The defendant's points I to IV inclusive, and VI and VII, challenge on various grounds the jurisdiction of the Territory to tax the salary of an employee of the Army who resides and works on a United States military reservation. His point I is that the place where he resides and works is not within the Territory. His point II is that the Territory does not have jurisdiction over the person of a federal employee living and working on a military reservation. His point III is that the Territory is without jurisdiction in connection with matters arising out of his employment on a military reservation. His point IV is that the tax law as applied to persons working in military establishments is violative of the provisions of Article I, Section 8, of the Constitution of the United States. His point VI is that taxation by the Terri-

tory of compensation of federal employees living on military reservations is not a rightful subject of legislation within the meaning of Section 55 of the Organic Act, and his point VII is that a tax on compensation of a federal employee working and living within areas reserved for military or naval purposes works an undue burden on the Government of the United States. His principal reliance is on Article I, Section 8, of the Constitution of the United States, which provides, *inter alia*, that "The Congress shall have Power * * * To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall [46] be, for the Erection of Forts, Magazines, Arsenals, Dock-yards, and other needful Buildings;—And

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The defendant admits that Hickam Field is geographically within the territorial limits of the Territory of Hawaii but he contends that the phrase "within the Territory" as used in the Act (R.L.H. 1945, c. 98) means "within the jurisdiction of the Territory." And since, as he contends, the Terri-

tory's jurisdiction does not extend to military reservations, it is without power to tax a salary earned by an employee of the Army who lives and works on a military reservation.

This court long ago and without Congressional consent held that property on a United States military reservation within the Territory owned by an individual is subject to taxation by the Territory. (*Cassels v. Wilder*, 23 Haw. 61.) This court also long ago held that the territorial district courts have jurisdiction of misdemeanors committed on land reserved for naval purposes. (*Territory v. Carter*, 19 Haw. 198.) In 1938 Congress enacted the Public Salary Tax Act (53 Stat. pt. 2, c. 59, § 4, p. 575), whereby the United States consented to the taxing of compensation received by officers and employees of the United States or of any agency or instrumentality thereof, as follows: "Sec. 4. The United States hereby consents to the taxation of compensation, received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession [47] or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation."

Thereafter, on the authority of *Van Allen v. The Assessors*, 70 U. S. 573, 585, and *Graves v. N. Y. ex rel. O'Keefe*, 306 U. S. 466, 478, this

court held that the authority of Congress to consent for the United States to taxation of compensation received by officers and employees of the United States or any agency or instrumentality thereof is unquestionable, and that holding was affirmed by the Ninth Circuit Court of Appeals. (In re Yerian, *supra*.) None of the foregoing cases are direct authority on the exact question posed by the points now under consideration, namely, whether or not the Territory is authorized to tax the salary of an employee of the Army who resides and works on a United States military reservation. They are however persuasive. Be that as it may, on October 9, 1940, the Congress recognized the jurisdictional claim of the Territory over areas owned and occupied by the United States, especially for taxation purposes, by enacting Public 819. (54 Stat. c. 787, p. 1059.) Public 819 has been reenacted as part of Title 4 of the United States Code by the Act of July 30, 1947 (61 Stat. c. 389) and is now officially sections 105-110, inclusive, of Title 4 of the United States Code.

The pertinent part of said Act follows: “(a) No person shall be relieved from liability for any income tax levied by any State or by any duly constituted taxing authority therein, having jurisdiction [48] to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State, or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such

State to the same extent and with the same effect as though such area was not a Federal area.

“(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.” (U. S. Code, Tit. 4, §§ 106a, 106b.)

Said Act defines the term “State” as including any Territory or possession of the United States and the term “income tax” as a tax levied on, with respect to, or measured by, net income, gross income, or gross receipts. (U. S. Code, Tit. 4, § 110.)

It seems clear that the above Act was expressly designed to express the consent of the United States to the levy by the States and Territories of just such a tax as the one here involved against persons residing and employed just as the defendant resides and is employed, and that the Congress had authority to so consent for the United States.

Defendant’s point VIII is that the provision of the Act exempting members of the armed forces on active duty from the tax renders said Act unconstitutional in that (a) it grants special privileges and immunities to individuals without approval of Congress, and (b) that it is discriminatory in that it does not also exempt federal employees living and working on military or naval reservations. His point IX is that said Act [49] is discriminatory in that it subjects him as a federal employee to the penalty of fine and imprisonment, to which employees of private persons are

not subjected, and his point X is that said Act is discriminatory in that it subjects him as a federal employee to the burden of filing returns while employees of private persons are not so burdened.

All of said points VIII, IX and X were considered and rejected by this court and by the Ninth Circuit Court of Appeals in the Yerian case, *supra*. The only factual difference between this case and the Yerian case is that the defendant in this case lives and works on a military reservation, whereas Yerian did not. We have already rejected the defendant's claim as to the effect of the fact that he resides and works on a military reservation. We conclude that there is no merit in any one of the defendant's points VIII, IX and X.

Defendant's point XI is that because the United States taxed his compensation and withheld its tax, he never actually received that part of his compensation and that for the Territory to tax his compensation without deducting the amount thereof withheld by the United States deprives him of property without due process of law.

By Paragraph 2 of the agreed statement of facts, upon which the case was tried in the district court, the defendant has admitted that the amount of taxes, penalties and interest sought to be recovered as set forth in the complaint are correct if any taxes are due. His point IX does not therefore involve a point of law ruled upon by the district magistrate and is not therefore properly before us on this appeal.

However, we choose to consider defendant's ar-

gument, but [50] in doing so we need do no more than refer to *Old Colony Tr. Co. v. Comm'r Int. Rev.*, 279 U. S. 716, 729, in which it was held that where the taxpayer acquiesced in the payment of his taxes by his employer it is "immaterial that the taxes were directly paid over to the Government," and that the tax paid by the employer for the employee was income of the employee.

By his point XII defendant claims exemption from the tax because his permanent domicile is elsewhere than Hawaii. He argues that he is deprived of property without due process of law in that said tax is imposed without regard to whether or not the taxpayer is already so subject to taxation by the State of his domicile. His point XVI is that the tax as applied to him is an example of "taxation without representation." The substance of the agreed statement of facts on these points is that the defendant is domiciled in and is a citizen of the State of Colorado; that he owns a home in said State and pays real and personal property taxes in said State; that he has returned the compensation herein sought to be taxed for taxation under the net income tax law of the State of Colorado and has paid a net income tax thereon without claiming or receiving any credit on account of his tax liabilities, if any, in the Territory of Hawaii. The income tax law of the State of Colorado is not made a part of the agreed statement of facts. We do not know whether or not under its terms the defendant was required to pay an income tax upon the compensation received by him

for personal services performed within the Territory of Hawaii. As far as we know, his inclusion of his Hawaii salary was voluntary and that he was not under any such liability.

Defendant cites no authority in support of his argument [51] on either of these points, and plaintiff rests its case thereon by citing *In re Yerian*, supra. In the *Yerian* case the tax in question had been imposed upon compensation received by the taxpayer for personal services performed by him within the Territory. No compensation for personal services performed by the taxpayer elsewhere was involved but enough was said in that case to support the conclusion that the tax was inapplicable to compensation earned by the taxpayer elsewhere than in Hawaii. So that if the provisions of the income tax law of the State of Colorado are similar in terms to our tax law compensation for personal services performed in Hawaii would not be subject to taxation in Colorado and payment of a tax thereon to the State of Colorado would be a voluntary act of the taxpayer and would have no effect upon his liability to Hawaii for the tax in question. The mere fact that the taxpayer in the instant case paid an income tax to the State of Colorado upon compensation received by him and subject to taxation under the laws of Hawaii is not evidence that the taxpayer was legally liable for the payment of such income tax under the laws of the State of Colorado. The voluntary payment of taxes for which a taxpayer is not liable does not make the payment of taxes for which he is liable

double taxation. (*The People v. Calloway*, 344 Ill. 488, 176 N. E. 912.)

Defendant's points XIII, XIV and XV may be considered together. His point XIII is that he is deprived of property without due process of law, in that said tax is discriminatory—salaried persons being subject to a two per cent tax, while persons engaged in business and the professions [52] are subject to a tax at a lesser rate.

His point XIV is that he is deprived of property without due process of law, in that no provision is made for refunding to the taxpayer the excess over the amount due under the net income tax law paid on account of the two per cent tax on salaries, and is arbitrary, discriminatory and confiscatory.

His point XV is that he is deprived of property without due process of law, in that said tax is oppressive and carries an unfair share of the entire tax load of the Territory.

Defendant's argument that the two per cent tax on compensation, imposed by chapter 98, Revised Laws of Hawaii 1945, is discriminatory because those in business and the professions are subject to a lower rate under the excise tax law, chapter 101, Revised Laws of Hawaii 1945, is not tenable. He fails to point out that those in business and the professions are additionally subject to the net income tax imposed by chapter 102, Revised Laws of Hawaii 1945, without any credit for the gross income tax paid under chapter 101, while employees do receive credit against their net income tax liability under chapter 102, to the extent of

seventy-five per cent of the tax paid under chapter 98. (§ 5504, R.L.H. 1945.)

The foregoing also answers defendant's point XIV and rejects his argument thereon.

The sustaining of the objection that the defendant voices by his assertion in his point XV that an unfair share of the tax revenues of the Territory is derived from the two per cent tax on wages, salaries and dividends would unduly restrict the classification of objects for taxation purposes.

To tax wages and salaries in one class and business and [53] professions in another is reasonable classification. (*Dole v. Philadelphia et al.*, 337 Pa. 375, 11 A. (2d) 163.) That being so, different rates of tax may be imposed; this is a commonplace of taxation and constitutional law. (*Nashville, C. & St. L. Ry. v. Browning*, 310 U. S. 362, 368, 369.)

The judgment is affirmed.

/s/ S. B. KEMP,

/s/ E. C. PETERS,

/s/ LOUIS LE BARON. [54]

H. M. Greenstein for defendant-appellant.

R. V. Lewis, Assistant Attorney General (W. D. Ackerman, Jr., Attorney General, with her on the brief) for plaintiff-appellee.

[Endorsed]: Filed July 20, 1948.

In the Supreme Court of the Territory of Hawaii
No. 2690

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

Appellee,

vs.

VICTOR J. VEATCH,

Appellant,

BANK OF HAWAII, Pearl Harbor Branch, and
the BISHOP FIRST NATIONAL BANK OF
HAWAII, Hickam Branch, Garnishees.

Appeal from the District Court of Ewa, County of
Honolulu, Territory of Hawaii, on
Points of Law.

DECISION ON APPEAL

In the above-entitled cause, pursuant to the
opinion of the above-entitled court rendered and
filed on July 30, 1948, the judgment of the lower
court is affirmed.

Dated at Honolulu, T. H., August 24, 1948.

By the Court:

(Seal) /s/ LEOTI V. KRONE,
Clerk.

Approved:

/s/ S. B. KEMP,
Chief Justice.

[Title of Supreme Court and Cause.]

PETITION FOR APPEAL

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the Territory of Hawaii:

Comes now Victor J. Veatch, Appellant above named, by his attorney Hyman M. Greenstein, deeming himself aggrieved by the judgment of the above entitled Court in the above entitled cause, which judgment was made and entered on August 24, 1948, and claiming that there are manifest and material errors to the damage of said Victor J. Veatch, in said cause, which errors are specifically set forth in the Assignment of Errors filed herewith, to which reference is hereby made, and respectfully prays that an appeal may be allowed in the above entitled cause and that he be allowed to prosecute said appeal to the United States Circuit Court of Appeals for [58] the Ninth Circuit, in accordance with the statutes in such cases made and provided; and that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings and papers in this cause, duly authenticated, for the correction of the errors complained of, and that a citation may issue.

And in this behalf, the said Victor J. Veatch, shows that said judgment was rendered on an appeal on points of law from the District Court of

Ewa, County of Honolulu, Territory of Hawaii, in the above entitled Court and cause, and involves the Constitution and laws of the United States of America.

Dated at Honolulu, T. H., this 24th day of August, 1948.

/s/ HYMAN M. GREENSTEIN,
Attorney for Victor J. Veatch,
Appellant. [59]

(Duly Verified.)

(Acknowledgment of Service.

[Endorsed]: Filed Aug. 24, 1948. [60]

[Title of Supreme Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the above named Victor J. Veatch, Appellant in the above entitled cause and files the following assignment of errors upon which he will rely in the prosecution of the appeal herewith petitioned for in the said cause of the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court entered on the 24th day of August, 1948.

1. The Supreme Court erred in affirming the judgment of the District Court of Ewa, County of Honolulu, Territory of Hawaii, and in failing to set aside and vacate the judgment of said District Court.

2. The Supreme Court erred in failing to rule that the Appellant being employed at Hickam Field, does [62] not receive compensation for "personal services performed within the Territory" within the meaning of Sec. 5342 R.L.H. 1945, and hence is not subject to the Compensation and Dividends Tax Law.

3. The Supreme Court erred in failing to rule that the Territory of Hawaii does not have jurisdiction over the person of federal employees living and working on military reservations to permit it to impose a tax on compensation derived from such employment.

4. The Supreme Court erred in failing to rule that the appellant is a federal employee, living on land reserved for purposes of the United States Army and working on a military reservation, and hence is not subject to the jurisdiction of the Territory of Hawaii in connection with matters arising out of such employment.

5. The Supreme Court erred in failing to rule that the Compensation and Dividends Tax Law as applied to persons working in military establishments is unconstitutional and in violation of Clause 17 of Art. I, Sec. 8, of the Constitution of the United States which grants exclusive power of legislation over such areas to the Congress of the United States.

6. The Supreme Court erred in failing to rule that a federal employee is not subject to taxation by the Territory of Hawaii on compensation received for personal services performed by him for

the United States Government in the absence of specific authority or consent granted either in the Organic Act or by other act of Congress. Nothing in the Organic Act for the Territory of Hawaii, nor [63] any other act of the Congress of the United States specifically grants unto the Territory such power of taxation.

7. The Supreme Court erred in failing to rule that the taxation by the Territory of Hawaii of the compensation of federal employees living on military reservations is not a “rightful subject of legislation” within the meaning of Section 55 of the Organic Act for the Territory of Hawaii.

8. The Supreme Court erred in failing to rule that the imposition of a tax on the compensation of federal employees living within areas reserved for military or naval purposes works an undue burden on the Government of the United States.

9. The Supreme Court erred in failing to rule that the provision in the Compensation and Dividends Tax Law exempting members of the Armed Forces on active duty renders said act unconstitutional on the following grounds:

(a) It grants special privileges and immunities to individuals without the same having been approved by Congress, as is required by Sec. 55 of the Organic Act.

(b) It is discriminatory in that it exempts members of the Armed Forces on active duty but does not exempt federal employees living and working on military or naval reservations or areas reserved for the purposes of the Army or Navy of the United States.

10. The Supreme Court erred in failing to rule that said tax law is discriminatory in that it subjects Appellant, as a federal employee, to the penalty of fine [64] and imprisonment, to which employees of private persons are not subjected.

11. The Supreme Court erred in failing to rule that said tax law is discriminatory in that it subjects Appellant, as a federal employee, to the burden of filing returns while employees of private persons are not so burdened; and in that Appellant's employer (the United States) is not required to make deductions on account of said tax, while employers of private persons are so required.

12. The Supreme Court erred in failing to rule that under said tax law the Appellant is deprived of property without due process of law in violation of the 5th Amendment to the Constitution of the United States in that he is taxed upon compensation, a portion of which he never actually receives; his gross compensation being first subject to deduction for federal income withholding taxes.

13. The Supreme Court erred in failing to rule that under said tax law the Appellant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in that said tax is imposed without regard to whether or not the taxpayer is already so subject to taxation by the state of his domicile.

14. The Supreme Court erred in failing to rule that under said tax law the Appellant is deprived of property without due process of law in violation

of the 5th and 14th Amendments to the Constitution of the United [65] States in that the rate of said tax is discriminatory—salaried persons being subject to a two per cent tax, while persons engaged in businesses, professions, or as wholesalers, manufacturers, producers, etc., are subject to a tax at a lesser rate.

15. The Supreme Court erred in failing to rule that under said tax law the Appellant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in the following respect:

Said tax law is imposed in co-ordination with the income tax law and credit up to 75% paid under said Tax Law is credited as against the amount due under said Income Tax Law, certain personal exemptions being allowed under said Income Tax Law—but no provision is made for the return to taxpayer of any monies he may have paid in excess of that due under the Income Tax Law after giving credit for the personal exemptions that are allowed—thus in effect imposing a higher tax rate on the low income bracket taxpayer.

16. The Supreme Court erred in failing to rule that under said tax law the Appellant is deprived of property without due process of law in violation of the 5th and 14th Amendments to the Constitution of the United States in that said tax is oppressive and carries an unfair share of the entire tax load of the Territory of Hawaii.

17. The Supreme Court erred in failing to rule that said tax law is unconstitutional as applied to the Appellant in that it is an example of "taxation without representation". [66]

Wherefore, Victor J. Veatch, prays that the said judgment of the Supreme Court of the Territory of Hawaii may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated at Honolulu, T. H., this 24th day of August, 1948.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 24, 1948. [67]

[Title of Supreme Court and Cause.]

ORDER ALLOWING APPEAL AND
FIXING AMOUNT OF BOND

Upon reading and filing the verified Petition for Appeal presented to this Court by Victor J. Veatch, in which he prays that an appeal may be allowed him to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment of this Court made and entered in the above entitled Court and cause on August 24, 1948, wherein it is alleged that manifest and material errors have occurred, to the end that said errors, if any there be, may be speedily corrected and justice done in

the premises; and upon said Victor J. Veatch, filing an Assignment of Errors, together with said Petition for Appeal, and together with a bond for costs in the sum of Two Hundred Fifty Dollars (\$250);

It Is Hereby Ordered that said appeal to the [69] United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed, and that said bond for costs in the amount of Two Hundred Fifty Dollars (\$250), filed by said Victor J. Veatch, be and it is hereby approved.

Dated at Honolulu, T. H., this 24th day of August, 1948.

/s/ S. B. KEMP,

Chief Justice of the Supreme Court of the Territory of Hawaii.

Attest:

(Seal) /s/ LEOTI V. KRONE,
Clerk.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 24, 1948. [70]

[Title of Supreme Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That Victor J. Veatch, as principal and United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of

Maryland, as surety, are held and firmly bound unto William Borthwick, Tax Commissioner of the Territory of Hawaii, Appellee, in the sum of \$250 for the payment of which well and truly to be made, said Victor J. Veatch as principal and United States Fidelity and Guaranty Company, as surety, do bind themselves, their respective heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

The condition of this obligation is such that:

Whereas the above bounden principal, Victor J. Veatch, has filed his Petition for an Appeal to the [72] United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in the above entitled cause by the Supreme Court of the Territory of Hawaii;

Now, Therefore, if the said principal shall prosecute said appeal with effect and answer all costs if he fails to sustain said appeal, then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof, said Victor J. Veatch has hereunto set his hand, this 23rd day of August, 1948.

/s/ VICTOR J. VEATCH,
Principal.

(Seal) UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By /s/ CALVERT G. CHIPCHASE,
Surety.
Its Attorney-in-Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 23rd day of August, 1948, before me personally appeared Victor J. Veatch, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(Seal) /s/ ROSE I. PAVAO,
Notary Public, First Judicial Circuit, Territory
of Hawaii.

My Commission expires January 22, 1951.

Approved:

/s/ S. B. KEMP,
Chief Justice.

Approved:

/s/ JOHN F. DYER,
Deputy Attorney General.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 24th day of August, 1948, before me personally appeared Calvert G. Chipchase, to me personally known, who being by me duly sworn did say that he is the Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 29th day of January, 1948, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was

signed and sealed on behalf of said corporation under the authority of its Board of Directors, and said Calvert G. Chipchase acknowledged said instrument to be the free act and deed of said corporation.

(Seal) /s/ WILLIAM B. STEVEN,
Notary Public, First Judicial Circuit, Territory
of Hawaii.

My Commission expires May 6, 1952.

[Endorsed]: Filed Aug. 24, 1948.

[73]

[Title of Supreme Court and Cause.]

CITATION ON APPEAL

The United States of **America**:

The President of the United States of America to
William Borthwick, Tax Commissioner of the
Territory of Hawaii, and to the Attorney Gen-
eral of the Territory of Hawaii, his attorney,
Greeting:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within forty (40) days from the date of this citation, pursuant to an appeal duly allowed and filed in the Office of the Clerk of the Supreme Court of the Territory of Hawaii on

August 24th, 1948, in said cause, wherein Victor J. Veatch is appellant, and you are appellee, to show cause, if any there be, why [75] the judgment made and entered in the Supreme Court of the Territory of Hawaii on August 24, 1948, should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States of America, this 24th day of August, 1948.

/s/ S. B. KEMP,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Attest:

(Seal) /s/ LEOTI V. KRONE,
Clerk.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 24, 1948. [76]

[Title of Supreme Court and Cause.]

PRAECIPE

To: Leoti V. Krone, Clerk of the Supreme Court of the Territory of Hawaii:

You will please prepare a transcript of the record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit

Court of Appeals for the Ninth Circuit, and include in said transcript the following, which are on file in said cause, to-wit:

1. Complaint and Summons.
2. Demurrer.
3. Agreed Statement of Facts.
4. Judgment of District Court of Ewa, County of Honolulu, Territory of Hawaii.
5. Notice of Appeal.
6. Magistrate's Certificate of Appeal.
7. Opinion of the Supreme Court, Territory of Hawaii, filed July 30, 1948. [78]
8. Decision on Appeal (Judgment) of Supreme Court, Territory of Hawaii, filed August 24, 1948.
9. Petition for Appeal.
10. Assignment of Errors.
11. Order Allowing Appeal and Fixing Amount of Bond.
12. Cost Bond on Appeal.
13. Citation on Appeal.
14. Any orders enlarging time to docket cause in the Ninth Circuit Court of Appeals.
15. This Praecipe.

Dated at Honolulu, T. H., this 24th day of August, 1948.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 24, 1948.

[79]

[Title of Supreme Court and Cause.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the Supreme Court of the Territory of Hawaii, do hereby certify that the foregoing documents listed in the index hereto attached are full, true and correct copies of the certified copies and of the original on file in the above-entitled court and cause.

I Further Certify that the cost of the foregoing transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit is \$90, and that said amount has been paid by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, this 4th day of September, 1948.

/s/ LEOTI V. KRONE,
Clerk.

[80]

[Endorsed]: No. 12036. United States Court of Appeals for the Ninth Circuit. Victor J. Veatch, Appellant, vs. William Borthwick, Tax Commissioner of the Territory of Hawaii, Appellee. Transcript of Record. Upon Appeal from the Supreme Court for the Territory of Hawaii.

Filed September 13, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 12036

VICTOR J. VEATCH,

Appellant,

vs.

WILLIAM BORTHWICK, Tax Commissioner of
the Territory of Hawaii,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD TO BE
PRINTED

Comes now Victor J. Veatch, Appellant herein, by and through his attorney, Hyman M. Greenstein, and in compliance with Subdivision 6 of Rule 19 requiring a concise statement of the points on which Appellant intends to rely on the appeal,

hereby adopts as the points on appeal the Assignment of Errors appearing in the transcript of the record, and, in compliance with the rules of this Court pertaining to the designation of the portion of the record to be printed, directs that the entire Record on Appeal, as set forth in the Praeipie heretofore filed with the Clerk of the Supreme Court of the Territory of Hawaii with the request that copies of the record as so designated be prepared and transmitted to this Court, be printed as the record on review.

Dated at Honolulu, T. H., this 30th day of August, 1948.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]:Filed September 18, 1948. Paul P. O'Brien, Clerk.

